



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 06 2013

Enforcement Sensitive - Do Not Release - Not Subject To Discovery - FOIA Exempt

MEMORANDUM

SUBJECT: Final Close-Out Memorandum for Removal Action
Modern Plastics, Benton Harbor, Berrien County, Michigan
Site Spill Identification Number: B5VN
Statute of Limitations Date: August 13, 2013

FROM: Michael Beslow, On-Scene Coordinator
Emergency Response Branch 2

Mark J. Palermo, Associate Regional Counsel *MJP*
Office of Regional Counsel

Valerie Mullins, Enforcement Specialist *vm*
Enforcement & Compliance Assurance Branch

TO: Site File

PART 1. DESCRIPTION OF SITE AND REMOVAL ACTIONS

The Modern Plastics Site (the Site) is a former plastics molding company. It is located at 489 North Shore Road in Benton Harbor, Berrien County, Michigan, 49022. The Site has a building that is approximately 200,000 square feet and is located on about 20 acres of land. The Site is immediately bordered to the north and southwest by a golf course, to the west by an aluminum/zinc die casting facility, and to the south and east by railroad tracks. Ox Creek runs through the property and flows west to the Paw Paw River (within 1/4 mile of the Site), which in turn flows to the St. Joseph River (within 1/2 mile of the Site), which flows to Lake Michigan (within one mile of the Site). Ox Creek is an indirect tributary to Lake Michigan via the creeks and rivers outlined above. There are commercial facilities and a residential neighborhood within 1/4 mile east of the Site (Reference [Ref.] 1).

Modern Plastics Corporation (Modern Plastics) has historically owned the Site property up through the U.S. Environmental Protection Agency's removal action on the Site.

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Modern Plastics ceased operation at the Site in August 2008, and filed a petition for Chapter 7 bankruptcy protection on January 26, 2009. The majority of the equipment was liquidated through the bankruptcy (Ref. 1).

Modern Plastics produced custom thermoset and thermoplastic molded plastic components for the automotive and various other industries. Thermoset molding uses heat and pressure to mold materials into the desired form. Petroleum products (such as hydraulic and soluble oils) were used in the compression and injection machines as hydraulic fluids (Ref. 2).

In February and March 2009, Villa Environmental Consultants, Inc. of Benton Harbor, Michigan, conducted Phase I and Phase II environmental site assessments (ESA) at the Site on behalf of a potential buyer. As a result of the Phase I and Phase II ESAs, the Michigan Department of Environmental Quality (MDEQ) was notified that a transformer at the Site was leaking. MDEQ requested assistance from EPA to further investigate the leaking transformer (Ref. 2).

On April 23, 2009, the EPA Region 5 Pesticides and Toxic Substances Branch (PTSB) conducted an inspection of the Site and discovered a total of eight transformers. The transformers all had "M_L" labels, indicating the presence of polychlorinated biphenyls (PCB). Oil and wipe samples collected by EPA contained Aroclor-1260, a PCB compound, at concentrations up to 688,000 micrograms per gram (µg/g) and 3,420 milligrams per wipe (mg/wipe), respectively (Ref. 2).

On February 16, 2010, an EPA On-Scene Coordinator (OSC) and WESTON Superfund Technical Assessment and Response Team (START) conducted an inspection at the Site. Based on the Site's conditions, the EPA OSC requested assistance from the Emergency and Rapid Response Services (ERRS) contractor. On February 17 -18, 2010, an emergency removal action was conducted at the Site. The leaking transformer was drained and approximately 300 gallons of PCB oil was collected and placed into drums. The floor beneath the transformer was cleaned. The transformer was left in place and the drums containing the PCB oils were labeled and stored within the Site's building. The secondary containment barriers for six of the seven remaining PCB transformers were patched with cement and cracks were filled with expanding sealing foam. All open drains that were suspected of discharging directly into Ox Creek or to the sanitary sewer were plugged. The Site's building was also secured (Ref. 1, Ref. 2).

On March 9, 2010, EPA, WESTON START, and the ERRS contractor remobilized to the Site to conduct extent-of-contamination sampling activities. In addition to the sampling activities, ERRS personnel patched leaking sections of roof near the formerly leaking transformer (T5) and placed a boom in Ox Creek at the outfall pipes (Ref. 2).

An EPA removal action occurred from June 14 to August 18, 2010. Removal action activities consisted of collecting, staging and logging drums and small containers; sampling all drums and small containers; performing field hazard categorization to determine waste streams;

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consolidating of waste streams; over-packing of drums; emptying, disassembling, and removing the eight PCBs transformers from the building, with the exception of transformer #8 which was decontaminated but left in the building; decontaminating of the PCB containment zone in Area 2 near transformer #1; draining and decontaminating the oil/water separator near Ox Creek; draining the non-PCB oil from transformer #9; and applying epoxy to the leaking transformer (transformer #1) scaffold and floor.

Removal activities were completed on August 18, 2010. The following wastes were transported off-site for disposal: 14,250 gallons of oil and water; 20,639 pounds of transformers; 6,350 gallons of oil; 1,247 gallons of water; 2,721 gallons of debris; 6,349 pounds of debris; 1 cubic yard of solids; 75 gallons of unused grease; 645 gallons of flammable liquids; 200 pounds of flammable liquids; 100 pounds of fluorescent lights; 60 pounds of lead-acid batteries; 1,000 pounds of loose-pack paints; 350 pounds of aerosol cans; 880 gallons of hazardous oils; 200 pounds of acid; 450 pounds of corrosive; and 257 gallons of laboratory packed chemicals (Ref. 2).

PART 2. COSTS INCURRED TO DATE

The EPA Superfund Accounting & Analysis Section reported the cumulative costs incurred by EPA during the removal action at the Site through July 9, 2011, in an Itemized Cost Summary Report prepared on September 22, 2011 (Ref. 3). These costs are itemized as follows:

Regional Payroll Costs	\$46,579.14
Headquarters Payroll Costs	\$0.00
Regional Travel Costs	\$4,831.09
Headquarters Travel Costs	\$0.00
Contract Costs	
ERU Contract (EPS50905)	\$269,069.31
START Contract (EPS50604)	\$90,790.44
TSS Contract (EPW05052)	\$124.14
TSS Contract (GSF0076J)	\$0.00
TSS Contract (EPW11024)	\$102.69
Miscellaneous Costs	\$0.00
EPA Indirect Costs	\$223,805.40
Recovered Costs	\$0.00
Total Site Costs	\$635,302.21

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PART 3. ENFORCEMENT ACTIONS AND POTENTIALLY RESPONSIBLE PARTY
INFORMATION

Modern Plastics ceased operation in 2008, and filed a petition for Chapter 7 bankruptcy on January 26, 2009 (Ref. 1).

On March 8, 2010, EPA issued a General Notice of Potential Liability to Thomas R. Tibble, Bankruptcy Trustee for Modern Plastics (Ref. 4). Mr. Tibble did not respond to the General Notice Letter. On March 31, 2010, EPA Region 5 Office of Regional Counsel sent a letter to Mr. Tibble's counsel requesting a response to the General Notice Letter, and made an informal request for certain information regarding the status of bankruptcy proceeding, the ability of the estate to satisfy secured creditors, and plans for final distribution of the assets of the estate. Although Thomas R. Tibble, Trustee did not respond in writing, research of the bankruptcy filings indicate that the list of the creditors' demands for monetary amounts exceeds any possible reimbursement for EPA (Ref 1). Regarding the estate's liabilities, there is approximately \$3.6 million in secured creditor claims and \$2.95 million in unsecured claims (Ref. 1).

The Site property is heavily encumbered with unpaid mortgage and tax liens (Ref. 1). The Trustee has made several attempts to sell the Site property without success (Ref. 1 and 5). Most recently, the Berrien County Treasurer obtained from the Bankruptcy Court relief from the automatic stay and was given leave to pursue tax forfeiture and foreclosure on the Site property (Ref. 6). As for other properties that Modern Plastics owned prior to the bankruptcy proceedings, these properties were sold by the Trustee and proceeds will soon be distributed to creditors. (Ref. 7).

Modern Plastics was itself a closely-held corporation owned by Robert Orlaske, his wife, Heidi Orlaske (now deceased), and members of Mr. Orlaske's family, including Greg Miller and Helen Tenney Miller. Robert Orlaske appears to have run the day-to-day operations of Modern Plastics, but there is insufficient information to indicate whether Orlaske's control and participation was such that he has operator liability under CERCLA (Ref 1).

PART 4. RECOMMENDATION AND REQUEST FOR APPROVAL

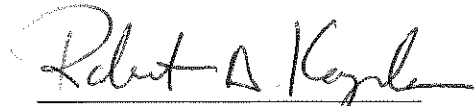
We recommend that the Modern Plastics Site be closed without continuing to pursue recovery of the remaining costs because the Estate does not have funds available to pay for response actions. Additionally, there is insufficient evidence to indicate that Mr. Orlaske has operator liability under CERCLA.

No known PRP is viable, and no known insurance coverage for the Site exists. Given these facts, it is doubtful that the Department of Justice would pursue this matter. Additionally, the cost of litigation and the use of additional resources would outweigh the potential reimbursement. Therefore, we recommend that EPA close out costs incurred during the removal action at this Site without further attempts to collect payment and request that the Director of the Superfund

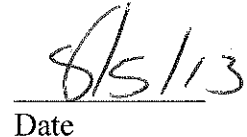
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Division and the Regional Counsel approve this closeout memorandum for these unrecovered costs by signing below.

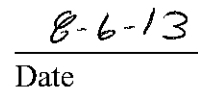
Approval:



Robert A. Kaplan, Regional Counsel
Office of Regional Counsel


Date

Richard C. Karl, Director
Superfund Division


Date

Disapproval:

Robert A. Kaplan, Regional Counsel
Office of Regional Counsel

Date

Richard C. Karl, Director
Superfund Division

Date

Attachment(s)

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REFERENCE DOCUMENTS
Modern Plastics Site

- Reference 1 - Action Memorandum – Request for Removal Action at Modern Plastics, Benton Harbor, Berrien County, Michigan; 04/29/2010
- Reference 2 - Federal On-Scene Coordinator's Report CERCLA Removal Action at the Modern Plastics Site, Benton Harbor, Berrien County, Michigan; 01/14/2011
- Reference 3 - Itemized Cost Summary, Modern Plastics Site, Benton Harbor, Michigan; Costs Through 08/31/2011; Report Date: 09/22/2011
- Reference 4 – Letter to Thomas R. Tibble from EPA; Re: Modern Plastics Site General Notice of Potential Liability; dated 03/08/10
- Reference 5 - Motion for Relief from Automatic Stay in Favor of Berrien County Treasurer, *In the Matter of Modern Plastics Corporation*, Case: 09-00651-swd (Bankr. W.D. Mich.), filed April 4, 2013
- Reference 6 - Order Granting Berrien County Treasure's Motion for Relief from Automatic Stay, *In the Matter of Modern Plastics Corporation*, Case: 09-00651-swd (Bankr. W.D. Mich. May 30, 2013)
- Reference 7 – Trustee's Final Report, *In the Matter of Modern Plastics Corporation*, Case: 09-00651-swd (Bankr. W.D. Mich.), filed June 10, 2013

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cc: *[Without Attachments]:*

Mary Bell (MC-2273A)
Michael Beslow (SE-5J)
Valerie Mullins (SE-5J)
Mila Bensing (SE-5J)
Earlene Rhodes (SM-5J)
Richard Hackley (MF-10J)
Linda Haile (MF-10J)

cc: *[With Attachments]:*

Mark Palermo, ORC (C-14J)
Records Center (SRC-7J)